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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

THE PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

SUSAN KAIL,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FOURTH JUDICIAL DISTRICT

NEIL F. HARTIGAN
Attorney General, State of Illinois

ROMA J. STEWART *
Solicitor General, State of Illinois
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 917-2570

Counsel for Petitioner

KENNETH R. BOYLE, Director
ROBERT J. BIDERMAN, Deputy Director
GWENDOLYN W. KLINGLER, Staff Attorney
State's Attorneys Appellate Prosecutor
151 Bruns Lane, Suite 103
Springfield, Illinois 62702
(217) 782-8076

Of Counsel

* Counsel of Record

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QUESTION PRESENTED FOR REVIEW

Whether selective enforcement violates equal protection where directed against a non-suspect class and where there exists a rational relationship between the enforcement policy and a legitimate state interest although not necessarily between the policy and the purpose of the specific law enforced?

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PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FOURTH JUDICIAL DISTRICT

OPINION BELOW

The opinion of the Appellate Court of Illinois, Fourth Judicial District, reversing respondent's conviction for possession of cannabis with intent to deliver, is reported at ____ Ill. App. 3d ____, 501 N.E.2d 979 (4th Dist. 1986). (Appendix A) The Illinois Supreme Court denied the People's petition for leave to appeal on April 15, 1987. (Appendix B)

JURISDICTION

The opinion of the Appellate Court of Illinois, Fourth Judicial District, was filed on December 9, 1986. The Supreme Court of Illinois denied petitioner leave to appeal on April 15, 1987.

This Court's jurisdiction is invoked under 28 U.S.C., sec. 1257(3). The instant petition for writ of certiorari is being filed within 60 days of the denial of petitioner's leave to appeal to the Illinois Supreme Court.

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Respondent Susan Kail had a long record of convictions for prostitution in Champaign, Illinois. (R. Vol. I, C22-C29) The Champaign Police Department followed a policy of

strict enforcement of all city ordinance violations in the downtown business area as a method of combatting prostitution. (R. Vol. II 14, 17-18)

On October 3, 1985, at 10:47 p.m., a Champaign Police Officer observed respondent riding a bicycle on a downtown business sidewalk in violation of a city ordinance. The uniformed police officer then investigated respondent's bicycle equipment pursuant to Illinois state law. (Ill.Rev.Stat., ch. 95½, sec. 11-1509 (1985)) The officer discovered that she did not have a bell on her bicycle in violation of a city ordinance. Respondent was then cited for not having proper equipment on her bicycle. (R. Vol. II, 3, 13)

When persons are stopped for ordinance violations in Champaign, they are permitted to post bond or, alternatively, they are given a notice to appear if they have proof of identification and meet the department's seven criteria for issuance of a notice to appear. If these requirements cannot be met and the person cannot post bond, the person is arrested, booked, and his property inventoried as a routine procedure. (R. Vol. II, 14-16)

In this case, respondent did not have bond money, did not have identification, and did not meet the requirements for issuance of a notice to appear. Therefore, the police officer arrested respondent, patted her down, handcuffed her, and placed her in the squad car for transportation to the police station for booking. During the patdown, the officer noticed that the pocket of her jacket was held shut by needles in a running stitch configuration. The officer had respondent remove her jacket and placed it on the front seat of the squad car.

At the police station, respondent was booked and her belongings inventoried. Her jacket pocket was opened by

removing the needles, and 75 marijuana cigarettes were found. The officer read respondent her *Miranda* rights and asked what she was doing with the cigarettes. Respondent replied, "Delivering it." (R. Vol. II, 53) Subsequently, respondent was indicted for unlawful possession of cannabis with intent to deliver.

At the hearing on respondent's motion to suppress evidence of the cannabis cigarettes and her confession, the police officer stated that she stopped respondent for violation of a city ordinance only because she was a suspected prostitute and pursuant to the department's "strict enforcement of the law" policy. The trial court viewed this case as one of selective prosecution and ruled that respondent's arrest was constitutional since she was not a member of a protected class and was not exercising a protected constitutional right. Accordingly, the motion to suppress was denied. (R. Vol. II, 40-41)

A stipulated bench trial was held on December 17, 1985. The court found respondent guilty of unlawful possession with intent to deliver cannabis, and, pursuant to agreement, sentenced her to one year imprisonment.

A divided Illinois Appellate Court reversed respondent's conviction, holding that the State's discretion to strictly enforce its laws must not be guided by classifications which have no rational relationship to the specific law being enforced. The dissenting opinion concluded that a rational basis should not be required between the enforcement policy and the law being enforced, but rather between the selective policy and a legitimate governmental policy.

The Supreme Court of Illinois denied the State's petition for leave to appeal.

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

THE EQUAL PROTECTION ANALYSIS OF THE COURT BELOW IS ERRONEOUS, HAS SERIOUS IMPLICATIONS FOR THE ADMINISTRATION OF JUSTICE, AND IS IN CONFLICT WITH ANOTHER APPELLATE DECISION HOLDING THAT A SELECTIVE ENFORCEMENT POLICY MAY BE DIRECTED AGAINST A NON-SUSPECT CLASS IF THERE EXISTS A RATIONAL RELATIONSHIP BETWEEN THE POLICY AND LEGITIMATE STATE INTERESTS.

This case squarely presents the issue of when selective enforcement is permissible where no protected constitutional right or activity is present. Specifically, this case raises the question of whether a rational relationship must exist between the selective enforcement policy and the particular law being enforced, or between the selective enforcement policy and a legitimate governmental policy.

Respondent's conviction for possession of cannabis with intent to deliver was reversed by a divided Illinois Appellate Court because no rational relationship existed between the practice of prostitution and the lack of proper bicycle equipment, which was the offense for which respondent was originally arrested. The dissenting opinion noted that the question of whether a rational basis must exist between the selective enforcement policy and the purpose underlying the specific law enforced was not addressed by this Court in *Wayte v. United States*, 470 U.S. 598 (1985), or *Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985). *See also United States v. Sacco*, 428 F.2d 264 (9th Cir. 1970). It concluded that as long as the classification upon which the selective enforcement is based is not suspect under a traditional equal protection analysis

and a legitimate governmental interest is served by the enforcement policy, selective enforcement is constitutionally permissible.

Clearly, persons reasonably suspected of being prostitutes do not constitute a suspect class against which selective enforcement is forbidden by this Court. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Oyler v. Boles*, 368 U.S. 448 (1962). Prostitution is a violation of the law, and the State has a legitimate interest in curbing that activity not only because it is illegal in itself, but also because of the increased criminal activity and sexually transmitted diseases associated with prostitution. In *Cherry v. Koch*, 491 N.Y.S. 2d 934 (1985), a prostitute and a patron appealed to the New York Supreme Court, Special Term, arguing that state statutes prohibiting prostitution were unconstitutional. The court found that neither petitioner's due process nor equal protection rights were violated by the statutes since the State demonstrated a rational relationship between the statute and a legitimate state interest. The court noted at length the attendant evils, crimes, diseases, and exploitation of young women associated with prostitution. 491 N.Y.S.2d at 944.

In the present case, the trial court found that respondent was not exercising a constitutional right, was not a member of a protected class, and concluded that selective enforcement aimed at curbing prostitution activities was permissible under the decisions of this Court in *Scott v. United States*, 436 U.S. 128 (1978), and *Wayte v. United States*, 470 U.S. 598 (1985). A similar fact situation is found in *People v. Mantel*, 388 N.Y.S.2d 565 (N.Y. Crim. Ct. 1976), where New York City's policy of strictly enforcing municipal health, fire, and building regulations against sex-related establishments in the downtown business area was at issue. The defendants asserted that they were

harassed by impermissible selective enforcement since other businesses in the downtown area were not cited for similar violations. The court rejected this contention, finding that the government's action was a legitimate response to public concern over the high incidence of crime and general deterioration of the area associated with businesses catering to commercial sex. The court noted that not all types of unequal enforcement of criminal statutes are to be condemned and that the operation of adult "peepshows" is not a protected activity. In upholding the strict enforcement of city health and safety ordinances against these establishments, the court required only that "a particular classification bear[ ] a rational relationship to the broad purposes of the criminal law and [ ] reasonably relate[ ] to law enforcement objectives. . . ." 388 N.Y.S.2d at 568. This decision upholding strict enforcement because of the rational relationship to broad law enforcement objectives is directly in conflict with the decision in the present case which would require a rational relationship between the purpose of the law being enforced and the classification against which strict enforcement is applied. The Illinois Appellate Court found no relationship between the class of suspected prostitutes and purpose underlying ordinances requiring bicycle safety equipment, and therefore concluded that strict enforcement of the latter was arbitrary and improper. However, in *Mandel* the court found that a concentrated inspection effort by building, fire, health and safety officials only against sex-related establishments was permissible since it is rationally related to legitimate law enforcement objectives, and any activity that carries with it a high incidence of crime is subject to strenuous law enforcement.

Adherence to the Illinois Appellate Court's new requirement of a rational relationship between the purpose of

a particular law for which a defendant is arrested and the group being prosecuted would clearly have a substantial impact on enforcement efforts focused on organized crime, gang activity and other societal evils when the arrest involves an offense theoretically unrelated to the suspected criminal actions or conspiracies. Because the issue squarely raised by this case is of significant importance to the administration of criminal justice and equal protection litigation generally, this Court should grant certiorari to correct the judgment below through clarification of the proper constitutional analysis to be applied.

CONCLUSION

For the foregoing reasons, petitioner prays that this Court grant the instant Petition for Writ of Certiorari and, upon review, reverse the decision of the Appellate Court of Illinois in this case.

Respectfully submitted,

NEIL F. HARTIGAN
Attorney General, State of Illinois

ROMA J. STEWART *
Solicitor General, State of Illinois

Counsel for Petitioner

KENNETH R. BOYLE, Director
ROBERT J. BIDERMAN, Deputy Director
GWENDOLYN W. KLINGLER, Staff Attorney
State's Attorneys Appellate Prosecutor

Of Counsel

* Counsel of Record

APPENDIX A

[Filed December 9, 1986]

No. 4-86-0036
IN THE APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

SUSAN ELAINE KAIL,

Defendant-Appellant.

Appeal from the Circuit Court
County of Champaign
No. 85CF1293
Honorable **Robert J. Steigmann,** Judge Presiding.

JUSTICE WEBBER delivered the opinion of the court:

Defendant was charged by information in the circuit court of Champaign County with the offense of unlawful possession with intent to deliver more than 30 but not more than 500 grams of a substance containing cannabis in violation of section 705(d) of the Cannabis Control Act (Ill. Rev. Stat. 1985, ch. 56½, par. 705(d)). Prior to trial, an indictment charging the same offense was returned, filed, and substituted for the information. Defendant's motion to suppress the cannabis and certain inculpatory statements made by defendant during her arrest was de-

nied after a hearing thereon. Thereafter, defendant and the State agreed that the State would move the court to substitute the indictment with an information charging defendant with the same offense, which motion was made and granted. In addition, defendant and the State stipulated to the evidence produced at the hearing on the defendant's motion to suppress the evidence and submitted the case for a trial at bench upon the stipulated evidence. At the conclusion of the trial, the court found defendant guilty and sentenced her to a term of 12 months. This appeal follows.

Three issues are raised on appeal: whether defendant's right to (1) equal protection and (2) due process under the fourteenth amendment were violated, and (3) whether a full custodial arrest of defendant solely because she was unable to produce adequate proof of identification or to pay bond was an unreasonable seizure under the fourth amendment?

The operative facts, briefly recapitulated, showed that on October 3, 1985, at approximately 10:47 p.m., defendant was riding a bicycle on a business sidewalk in the city of Champaign. According to the testimony of Officer Seeley, the arresting officer, she stopped defendant under a police-department policy requiring strict enforcement of all laws against suspected prostitutes, she suspected defendant to be a prostitute, and she would not have stopped defendant if she did not so suspect. After stopping defendant, Officer Seeley noticed that defendant's bicycle lacked a bell. Riding a bicycle on a business sidewalk and failing to equip the bicycle with a bell are violations of the Champaign city ordinances. Officer Seeley then charged defendant with failing to have a bell on her bicycle but did not charge her with riding a bicycle on a sidewalk. Because defendant lacked both adequate proof of iden-

tification and $50 to post bond, Officer Seeley arrested her, performed a "pat-down" search, handcuffed defendant and drove her to the police station where she was to be jailed until she could produce bond or proof of identification. Preliminary to placing her in a cell, defendant was subjected to an inventory search during the course of which police uncovered the cannabis. Further facts as necessary to an understanding of the issues will be developed below.

Because we find that defendant's right to equal protection was violated we do not address the other issues raised by her on appeal.

The State contends that the police department's policy of enforcing all ordinances against individuals it suspects of being prostitutes, but not against individuals not so suspected, furthers its legitimate goal to eradicate prostitution from the community.

We begin our analysis by stating what this case is and is not about. We are here confronted with the constitutionality of an administrative policy under which an otherwise constitutional ordinance is selectively enforced. This case does not involve a police officer's discretion to determine whether under the circumstances enforcement was warranted. Nor does this case involve the enforcement of a law the purpose of which is to combat prostitution. Rather, the law involved is an obscure minor ordinance the purpose of which is to assure a modicum of safety in warning of the approach of a bicycle.

While the State has broad discretion to enforce its laws, that discretion may not be exercised on the basis of an arbitrary classification. Claims of selective enforcement of the laws are appropriately judged according "to ordinary equal protection standards." (*Wayte v. United States*

(1985), 470 U.S. ____, ____, 84 L. Ed. 2d 547, 556, 105 S. Ct. 1524, 1531.) Where heightened scrutiny is inappropriate, the challenged State action is presumed to be valid and will be sustained where the classification is rationally related to a legitimate State interest. (*Cleburne v. Cleburne Living Center* (1985), 473 U.S. ____. ____, 87 L. Ed. 2d 313, 320, 105 S. Ct. 3249, 3254.) However, the State "may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational" (473 U.S. ____, ____, 87 L. Ed. 2d 313, 324, 105 S. Ct. 3249, 3258.) It is the duty of the courts to decide whether classifications bear a rational relationship to the law being enforced. The enforcement of an ordinance adopted by a city's governing body must satisfy the same requirement that is applicable to the enforcement of a statute enacted by the General Assembly. See *Chicago National League Ball Club, Inc. v. Thompson* (1985), 108 Ill. 2d 237, 368, 371, 483 N.E.2d 1245, 1250, 1252.

The record in this case is clear. Officer Seeley testified that she stopped defendant pursuant to a police department policy to strictly enforce all ordinances against suspected prostitutes, that she suspected defendant of being a prostitute, and that she would not have stopped defendant but for her suspicion and the department's policy. Moreover, Officer Seeley acknowledged on cross-examination that she had, during the course of her three years of employment with the Champaign police department, seen literally hundreds, if not thousands of bicycles without bells around the Champaign university campus, but had not arrested anyone, prior to her arrest of defendant, for that offense.

While we recognize the State's right to legislate and enforce laws designed to combat prostitution (see *e.g., Peo-*

ple ex rel. Difanis v. Boston (1981), 92 Ill. App. 3d 962, 967-68, 416 N.E.2d 333, 338), the law before us is of a different character. The purpose of the ordinance requiring a bell on a bicycle clearly does not envision the eradication of prostitution. There is no conceivable set of facts which would establish a rational relationship between the class of suspected prostitutes and the State's legitimate interest in enforcing the ordinance requiring bells on bicycles. We can conceive of no such set of facts, and the State has failed to propound any. To suggest that the requirement of a bell on one's bicycle should be enforced only against suspected prostitutes because it helps combat prostitution is clearly so attenuated as to render the classification arbitrary or irrational.

Reversed.

SPITZ, P.J., concurs; GREEN, J., dissents.

JUSTICE GREEN, dissenting:

The majority correctly holds that the classification created by the policy of selective enforcement against suspected prostitutes is not a suspect classification requiring strict scrutiny but one subject to the rational basis test. A difficult question arises as to whether the rational bases must apply to the relationship between the enforcement policy and the law being enforced as the majority holds or between the enforcement policy and a legitimate governmental policy. A highly respected text discusses this question and indicates that the courts have not focused sharply upon the question. (LaFave & Israel, 2 Criminal Procedure § 13.4, at 197 (1984).) I conclude that the better rule is to merely require the relationship between the selective policy and legitimate governmental policy to have a rational basis. Here, I would affirm.

In regard to selective prosecutions not subject to a direct scrutiny test, LaFave and Israel state in part:

> "Yet another important issue regarding the meaning of the 'rational relationship' test in this context concerns the subject matter against which the classification must appear to be rational. That is, is it sufficient 'that the classification bear a rational relationship to a permissible governmental purpose,' or must the classification be 'rationally related to the purposes of the criminal law *under which the defendant is charged*'? More particularly, is it permissible to select out a person for prosecution under a particular law because of an unprovable belief that this individual is guilty of other criminal conduct? Though the propriety of such a charging policy has been vigorously debated by the commentators, the courts have given little attention to the question of whether such a policy is vulnerable on equal protection grounds. It would seem, however, that the extent of vulnerability depends upon the nature of the statute under which the prosecution is brought.
>
> Consider, for example, *United States v. Sacco* [(9th Cir. 1970), 428 F.2d 264], where the defendant objected that he was singled out, 'based on his suspected role in organized crime,' for investigation and prosecution under the alien registration laws. That this was the basis of selection was not disputed, yet the court unhesitantly held that it 'cannot be said that that standard for selection is not rationally related to the purposes of * * * the alien registration laws.' In other words, it is quite rational, considering the purposes underlying the alien registration statute, to focus upon those aliens suspected not to be law-abiding. One might well doubt whether the result would be the same were Sacco singled out on the same basis for prosecution under a generally nonenforced criminal adultery statute; there is nothing relating to the policies underlying *that* law which would explain a focus upon those suspected of

> organized crime. Yet, authority is to be found which would seemingly produce the same result on those facts. Illustrative in *People v. Mantel* [(N.Y. Crim. Ct. 1976), 88 Misc. 2d 439, 388 N.Y.S.2d 565], where a task force of fire, safety and health inspectors made intensive and frequent inspections only of 'sex related' businesses in the Times Square area after more traditional efforts to curb vice in that vicinity had failed. Stating the test as being 'whether a particular classification bears a rational relationship to the *broad purposes* of the criminal law,' the court upheld the practice. Whether the court would have reached the same result under the *Sacco* approach is problematical."
>
> (Emphasis in original.) LaFave & Israel, 2 Criminal Procedure § 13.4, at 197-98 (1984).

Neither *Wayte* nor *Cleburne* speaks to the question of whether the rational basis must be applied to the relationship between the selective policy and the offense to which it is being applied. In *Wayte,* the court held that a selective policy of prosecuting only those suspected violators of Selective Service registration requirements who had reported the violations themselves or had been reported by others met constitutional muster. No issue was raised as to whether a rational relationship between the offense being selectively prosecuted and legitimate governmental interest would suffice. In *Cleburne,* the issue was whether an ordinance which prohibited operation of a group home for mentally retarded in a particular area was unconstitutional as applied to the owners of a site, because of the lack of rational relationship between the ordinance and the legitimate governmental interests of the municipality.

The invalidation of the selective enforcement policy here will be of little impact, but the precedent being established will have substantial impact. It will prohibit selec-

tive enforcement focusing on those thought to be guilty of organized crime when the selective enforcement involves an offense unrelated to the criminal conspiracies of which the accused are suspected. No cases adopting the view of the majority have been called to my attention, and the cited text indicates that few if any of such decisions by a court of review exist.

I recognize that LaFave and Israel indicate that little authority exists in support of a theory that the rational relationship need exist only between the offense being selectively prosecuted and legitimate governmental interest and I respect their conclusion that such a relationship is insufficient to justify selective prosecution. However, when the classification upon which the selective policy is based is not suspect within equal protection concepts and there is a legitimate governmental interest served by the prosecution, I do not deem one prosecuted upon a showing of probable cause to be unduly prejudiced by the prosecution. Such a prosecution should not be constitutionally impermissible.

The legitimate governmental interest in deterring prostitution justified the instant policy of selective prosecution.

APPENDIX B

(Letterhead Of)

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
Supreme Court Building
Springfield, Ill. 62706
(217) 782-2035

April 15, 1987

State's Attorneys Appellate Prosecutor
Fourth Judicial District
151 Bruns Lane, S#103
Springfield, IL 62702

No. 64659—People State of Illinois, petitioner, v. Susan Elaine Kail, respondent. Leave to appeal, Appellate Court, Fourth District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on May 7, 1987.

EDITOR'S NOTE

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NO. _____

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THE PEOPLE OF THE STATE OF ILLINOIS,
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SUSAN KAIL,
Respondent.

RESPONSE TO PETITIONER'S ASSERTION OF REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

DANIEL D. YUHAS
Deputy Defender
Office of the State Appellate Defender
Fourth Judicial District
300 East Monroe, Suite 102
Springfield, IL 62701
(217) 782-3654

COUNSEL FOR RESPONDENT

DEBORAH L. ROSE
1300 South Eighth, Suite 2
Box 1207
Springfield, IL 62705
(217) 544-1777

OF COUNSEL

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W. LaFave & J. Israel, Criminal Procedure, §13.4 (1984) 3

STATEMENT OF THE CASE

Petitioner's statement of the case is acceptable with the following exceptions and additions:

The petitioner asserts merely that the Champaign Police Department followed a policy of strict enforcement of all city ordinances in the downtown business area as a method of combatting prostitution. More accurately, the policy was strict enforcement of city ordinances only against suspected prostitutes. People v. Kail, 150 Ill.App.3d 75, 501 N.E.2d 979, 981 (4th Dist. 1986).

Additionally, the bicycle ordinance was generally not enforced at all; the arresting officer testified that during her three years of employment with the police department, she had seen "hundreds," if not "thousands" of bicycles without bells being ridden around the Champaign university campus, and had never arrested anyone for that offense. 501 N.E.2d at 981-82.

RESPONSE TO PETITIONER'S ASSERTION OF REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

THE EQUAL PROTECTION ANALYSIS OF THE COURT BELOW IS CORRECT. PETITIONER'S ASSERTION THAT THE LOWER COURT'S OPINION IS IN CONFLICT WITH ANOTHER APPELLATE DECISION IS ERRONEOUS, AND THE ASSERTION THAT THE SELECTIVE ENFORCEMENT POLICY IS PERMISSIBLE IF THERE EXISTS A RATIONAL RELATIONSHIP BETWEEN THE POLICY AND A STATE INTEREST IS INCORRECT.

The State would limit the inquiry here to the constitutionality of a policy of enforcing a law that is unrelated to prostitution only against suspected prostitutes (and no other persons) in order to control prostitution. The State's analysis does not take into account the fact that in this case, the bicycle bell ordinance is not (or at least rarely) enforced against anyone except suspected prostitutes. Aside from the repugnant notion that the police should be permitted to interfere with one's liberty based on what the police decide is a person's reputation, such a policy simply offends elementary equal protection principles that those who are similarly situated be similarly treated. In Champaign, Illinois, all who are not suspected prostitutes can ride unbelled bicycles with impunity. But woe to the person whom the police label a "suspected prostitute."

The State relies on People v. Mantel, 388 N.Y.S.2d 565 (N.Y.Crim.Ct. 1976) for the proposition that the selective enforcement in this case is permissible. However, Mantel is distinguishable from this case. There, the City of New York had a policy of strictly enforcing health, fire and building regulations against sex-related establishments in the downtown area. The court declared that this was permissible because "any area of activity [of sex-related establishments in this case] that carries with it a high incidence of crime is an appropriate choice for strenuous law enforcement." 388 N.Y.S.2d at 569. It was not disputed that a high incidence of crime and a general deterioration of the area (hence the reasons for code-enforcement) were associated with the proliferation of businesses catering to commercial sex. Id. at 567. To apply the same reasoning to the instant case would require the conclusion that bicycle riding is associated with a high incidence of prostitution.

The same analysis can be applied to the case of United States v. Sacco, 428 F.2d 264 (9th Cir. 1970), which is cited in the dissenting opinion in Kail and appears in a discussion from LaFave and Israel's treatise on criminal law. W. LaFave & J. Israel, Criminal Procedure, §13.4 (1984). Those commentators noted that in a selective prosecution case, the "extent of vulnerability depends upon the nature of the statute under which the prosecution is brought." Id. In Sacco, defendant complained that he was singled out for prosecution under the federal alien registration laws simply because he was suspected of being involved in organized crime. The court, justifying the selective enforcement policy, noted that the purpose of the alien registration laws was to further the legitimate governmental interest in preventing non-law-abiding aliens from living in this country. The standard for the selective enforcement policy (suspected role in organized crime) was rationally related to the purpose of the alien registration law. Again, applied to this case, suspected status as a prostitute has no rational relation to the purpose of the bicycle bell ordinance. This is consistent with the analysis in the Mantel case.

The selective enforcement policies in Sacco and Mantel were constitutionally permissible because there was a rational relationship between the three elements involved: the class member, the law being enforced, and another legitimate governmental objective. Selectively enforcing the alien registration laws against those suspected of crime was permissible because the alien registration laws were aimed at government monitoring of non-law-abiding aliens. Selectively enforcing the building codes against sex-related establishments was permissible because there was a relationship between the incidence of crime and physical deterioration of a neighborhood and sex-related establishments. In the instant case, there is no relationship between the policies underlying the bicycle ordinance and prostitution.

The dissenting judge in the instant case concluded that as long as the persons to whom the selective enforcement policy is

applied are not members of a "suspect" class, he did "not deem one prosecuted upon a showing of probable cause to be unduly prejudiced by the prosecution." The dissent failed to consider that this statute was generally not enforced. Status as a reputed prostitute may not be a suspect class for equal protection purposes, but it is arbitrary and irrational for the State to attempt to control prostitution by making riding a bicycle without a bell a crime only for suspected prostitutes.

CONCLUSION

For the foregoing reasons, respondent requests that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

DANIEL D. YUHAS
Deputy Defender
Office of the State Appellate Defender
Fourth Judicial District
300 East Monroe, Suite 102
Springfield, IL 62701
(217) 782-3654

COUNSEL FOR RESPONDENT

DEBORAH L. ROSE
1300 South Eighth, Suite 2
Box 1207
Springfield, IL 62705
(217) 544-1777

OF COUNSEL